

# EXHIBIT E

## **Deposition of Christopher Hull**

**O'Donnell/Salvatory, Inc. v. Microsoft Corporation**

**December 29, 2021**



**206.287.9066 | 800.846.6989**

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

[www.buellrealtime.com](http://www.buellrealtime.com)

email: [info@buellrealtime.com](mailto:info@buellrealtime.com)



O'Donnell/Salvatory, Inc. v. Microsoft Corporation

Christopher Hull

Page 1

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

---

O'DONNELL/SALVATORI, INC., an )  
Illinois corporation, )  
 )  
 ) Plaintiff/Counterclaim ) No. 2:20-cv-00882-MLP  
Defendant, )  
 )  
v. )  
 )  
MICROSOFT CORPORATION, a )  
Washington corporation, )  
 )  
Defendant/Counterclaim )  
Plaintiff. )  
 )

---

REMOTE VIDEOCONFERENCE DEPOSITION UPON ORAL EXAMINATION

OF

CHRISTOPHER HULL

---

7:33 A.M.

December 29, 2021

(All participants appeared via videoconference.)

REPORTED BY: Laura Gjuka, CCR #2057

BUELL REALTIME REPORTING, LLC  
206.287.9066 | 800.846.6989

O'Donnell/Salvatory, Inc. v. Microsoft Corporation

Christopher Hull

Page 2

1 REMOTE APPEARANCES

2 FOR THE PLAINTIFF (via videoconference) :

3 MARK LAWRENCE LORBIECKI  
4 WILLIAMS, KASTNER & GIBBS PLLC  
5 601 Union Street, Suite 4100  
6 Seattle, WA 98101-2380  
7 mlorbiecki@williamskastner.com

8 FOR THE DEFENDANT (via videoconference) :

9 PETER J. ANDERSON  
10 DAVIS WRIGHT TREMAINE LLP  
11 865 South Figueroa Street, Suite 2400  
12 Los Angeles, CA 90015  
13 peteranderson@dwt.com

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## O'Donnell/Salvatory, Inc. v. Microsoft Corporation

Christopher Hull

Page 5

1 CHRISTOPHER HULL, witness herein, having been  
2 duly sworn by the Certified  
3 Court Reporter, testified  
4 under oath as follows:

## EXAMINATION

7 | BY MR. LORBIECKI:

8 Q. Good morning, Mr. Hull. How are you?

9 A. Very well.

10 Q. Good.

11 A. How are you doing, Mr. Lorbiecki?

12 Q. Doing alright. You're aware that the purpose of  
13 today's session is to depose you in the case of  
14 O'Donnell/Saveatori Music versus Microsoft, correct?

15 A. Yes.

16 Q. Okay. Have you ever been deposed before?

17 A. I have not.

18 Q. Have you ever testified in court before?

19 A. Yes, I have.

20 Q. Now, you're aware that the oath that you were  
21 just given has equal gravity to that if we were all  
22 appearing in court; is that fair?

23 A. Yes.

24 Q. Now, in your deposition I'm going to be asking  
25 you questions. You'll be answering them under oath.

Page 26

1 this report.

2 Q. Are these royalty statements that were provided  
3 to you as having originated with Sumthing Else?

4 MR. ANDERSON: Objection, vague and  
5 ambiguous.

6 A. No, these are royalty statements that would have  
7 been -- I don't know where they originated, but they  
8 were prepared and rendered to ODS, is my understanding.

9 Q. How do you have that understanding?

10 A. Because many of these payments reconcile to the  
11 payments that Ms. Boschan represented in her report.

12 Q. Do you have any independent basis? For  
13 instance, did you review the GL account referred to in  
14 Column S in order to assure the payments were made?

15 A. No.

16 Q. I'm sorry, I didn't catch your answer.

17 A. No.

18 Q. Did you check the invoice references as they are  
19 set out in Column T?

20 MR. ANDERSON: Objection, vague and  
21 ambiguous.

22 A. No.

23 Q. What does Column Q, "Object Key," the heading to  
24 Column Q, "Object Key," mean?

25 A. I do not know.

## O'Donnell/Salvatory, Inc. v. Microsoft Corporation

Christopher Hull

Page 28

1 MR. ANDERSON: Objection, lacks  
2 foundation that he used any interpretation of clearing  
3 date in his report.

4 A. I did not reference that. I don't know the  
5 answer to your question.

6 Q. So is it fair to say that you would not rely on  
7 the information in Column N to prove that payment was  
8 made to ODS?

9       A. I don't know. I don't know what -- I didn't  
10      rely on it in this report.

11 Q. Do you have any independent information to  
12 demonstrate that each of these payments were in fact  
13 made?

14 MR. ANDERSON: Objection, asked and  
15 answered twice already.

Q. (BY MR. LORBIECKI) You may answer.

17 A. I think the period -- the vast majority of these  
18 represented payments for the time period that coincides  
19 with the information set forth in the Boschan report  
20 reconcile, and that independently confirmed that these  
21 payments were in fact made for the periods for which the  
22 data overlaps.

23 Q. And that's the complete extent of proof that you  
24 have that payments were made?

25 A. That, and the existence of the royalty

Page 29

1 statements and the fact that this report indicates  
2 payments to have been made. I am accepting that.

3 Q. I'm going to refer you back to your Exhibit 1,  
4 your report. And, again, we're still on page 6 thereof.

5 A. Got it.

6 Q. You list 147 documents, but unlike the preceding  
7 documents, you don't list Microsoft control numbers.

8 MR. ANDERSON: Is that a question?

9 Q. (BY MR. LORBIECKI) Do you know --

10 MR. LORBIECKI: I'll finish in a second.

11 MR. ANDERSON: Okay. Thank you.

12 Q. (BY MR. LORBIECKI) Do you know the control  
13 numbers of those documents? Do you know that they were  
14 produced or Bates stamped?

15 MR. ANDERSON: Objection, compound.

16 A. As we're sitting here right now, I do not know.

17 Q. In No. 6 you reference the Appendix A to this  
18 report, "WC Music Data." What was the source of  
19 Appendix A?

20 MR. ANDERSON: Objection, vague and  
21 ambiguous.

22 A. I presume it was prepared by Warner Chapell.

23 Q. It doesn't -- I'm looking at the rebuttal  
24 Schedule A. I'm sorry -- yes. Is that the Appendix A  
25 referred to?

O'Donnell/Salvatory, Inc. v. Microsoft Corporation

Christopher Hull

Page 39

1 least that's what I heard.

2 MR. LORBIECKI: 7:30. You're right. I  
3 apologize, Peter.

4 MR. ANDERSON: No, no need to apologize.

5 MR. LORBIECKI: You're right, 7:30.

6 MR. ANDERSON: So back at 9:10?

7 MR. LORBIECKI: Yes, 9:10.

8 MR. ANDERSON: Okay.

9 (Short break taken.)

10 Q. (BY MR. LORBIECKI) Let's turn to page 8 of  
11 Exhibit 1, your report. Specifically, I want to -- you  
12 were gracious enough to provide us with a thumbnail  
13 overview of ASCAP at page 8.

14 A. Uh-huh.

15 Q. I wanted to ask you, how does a work come to be  
16 registered with ASCAP?

17 A. The music publisher would register the works.

18 Q. And isn't it in fact the case that ASCAP has a  
19 security system in place so that once a publisher  
20 registers a work, it's only the publisher who can change  
21 the attribution, both to the writers and to the  
22 publisher?

23 A. I do not know that.

24 Q. Have you done registrations for any of your  
25 clients?

Page 40

1 A. No. No. I'm not a music publisher. I'm a  
2 royalty accountant.

3 Q. Are you familiar with the registration process?

4 A. Not directly.

5 Q. Do you know what a cue sheet is?

6 A. Yes.

7 Q. What is a cue sheet?

8 A. It's a listing of music utilized in an  
9 audio-visual production.

10 Q. I'm going to set out my understanding of what  
11 occurs in an ASCAP registration and payment, and to the  
12 extent that you disagree with me, I'll ask the question,  
13 how is it that you disagree or how have I gotten it  
14 wrong?

15 So as I understand it, you stated, and I  
16 agree, that the publisher has the responsibility to  
17 register a work. At that point, ASCAP has two different  
18 ways to find out who is entitled to payment for  
19 performance of the work. One of the ways is its  
20 independent investigation arm whereby it compares things  
21 that are, say, posted on the web with what it knows as  
22 the form of a work. And the second way is by means of  
23 cue sheets that are provided by the publisher to show  
24 where the work has been performed. Is your  
25 understanding similar to mine?

## O'Donnell/Salvatory, Inc. v. Microsoft Corporation

Christopher Hull

Page 41

1 MR. ANDERSON: First, there's an  
2 objection that counsel has misstated the witness's  
3 testimony.  
4 Q. (BY MR. LORBIECKI) Mr. Hull?  
5 A. Yes.  
6 Q. Is your understanding similar to my own?  
7 A. I don't think that the music publisher provides  
8 the cue sheets to ASCAP. I think the company that  
9 produces the audio-visual work does that because they're  
10 the only people in the world who will know what music  
11 got used.  
12 Q. So once ASCAP has a cue sheet, what does it do  
13 with the information in the cue sheet?  
14 A. It should utilize the cue sheet to report  
15 royalties.  
16 Q. And how does it use the cue sheet to report  
17 royalties?  
18 A. It should represent the report royalties to the  
19 publishers set forth therein.  
20 Q. Is it the case that, for instance, a particular  
21 type of performance has a mechanical royalty that  
22 attaches to it so that ASCAP is aware of how much to  
23 charge for the performance?  
24 MR. ANDERSON: I'm sorry, objection,  
25 argumentative.

Page 42

1 A. Would you mind restating the question?

2 Q. Let me ask it in a different fashion. How does  
3 ASCAP reckon the royalty that is due for a performance?

4 A. It would rely on the cue sheets and whatever the  
5 registrations are.

6 Q. How would it determine the amount due for a  
7 particular performance?

8 A. ASCAP, as any PRO, has algorithms and  
9 methodologies for attaching financial earnings to a  
10 song.

11 Q. If you were asked to audit ASCAP's distribution  
12 of money, how would you determine whether ASCAP sent the  
13 right amount of royalty to either of the publisher or  
14 the performer?

15 MR. ANDERSON: A performer?

16 A. I've never been asked to audit ASCAP or any PRO.  
17 I do a considerable amount of work on behalf of  
18 songwriters, auditing music publishers, but I've never  
19 been asked to audit a PRO.

20 Q. On the same page of your report you speak of  
21 SoundExchange. SoundExchange -- does SoundExchange  
22 administer its obligations with regard to these licenses  
23 in the same or a very similar fashion to ASCAP?

24 MR. ANDERSON: Objection, vague and  
25 ambiguous, lacks foundation, calls for speculation.

Page 43

1 Q. (BY MR. LORBIECKI) Well, let me ask it to you  
2 differently then. How would you distinguish how ASCAP  
3 distributes royalties from how SoundExchange distributes  
4 royalties?

5 MR. ANDERSON: Objection, vague and  
6 ambiguous.

7 A. I think that the SoundExchange is specific in  
8 their allocation of royalty earnings. Those royalties  
9 are triggered pursuant to United States copyright law  
10 and paid by digital services who account to  
11 SoundExchange at a statutory rate and they report actual  
12 usage. And SoundExchange prepares its distribution to  
13 the copyright owner and the artist who perform or own  
14 that master recording.

15 Q. How is that different from how ASCAP determines  
16 who is entitled to royalties?

17 A. ASCAP has their own methodology for  
18 determining -- their own rules and methodology for  
19 determining financial compensation. The allocation to  
20 the publisher and the writer is very similar to  
21 SoundExchange. They're basically a 50 percent split,  
22 ASCAP going 50 percent to the publisher, 50 percent to  
23 the writer; SoundExchange going 50 percent to the  
24 copyright owner, 50 percent to the performing artist.

25 Q. Would a single performance result in liability

Page 44

1 to ASCAP and to SoundExchange simultaneously for that  
2 performance?

3 MR. ANDERSON: Objection, incomplete  
4 hypothetical.

5 A. What is the venue of the performance? What type  
6 of performance is it?

7 Q. Let's put it on Pandora.

8 A. Okay. Pandora would have two liabilities, one  
9 to ASCAP and one to SoundExchange.

10 Q. So theoretically is it possible that those  
11 royalties would be ultimately owed to four distinct  
12 parties, that is to say, the publisher, the writer, the  
13 performer, and the copyright holder?

14 A. Yes.

15 Q. How does AARC fit into this?

16 A. AARC is basically blank media meant to  
17 compensate copyright owners for recorded music taped  
18 onto cassette tapes and CDs, that type of a thing.  
19 There is a fee charged to the manufacturers of blank  
20 media, and they would pay a lump sum unallocated amount  
21 of money to AARC, who would then distribute it to its  
22 members.

23 Q. Is it distributed then uniformly to the members?

24 MR. ANDERSON: Objection --

25 A. I don't really know. I know that -- to be

Page 45

1 perfectly honest, while I've always heard of AARC, I've  
2 never seen a penny of AARC royalties reported to any of  
3 my clients.

4 Q. Where no cue sheet is submitted, how does ASCAP  
5 determine who owes it and therefore its publishers and  
6 songwriters money?

7 MR. ANDERSON: Objection, incomplete  
8 hypothetical.

9 A. I don't know. That's a music publisher's  
10 question. I'm a royalty accountant.

11 Q. If you were to represent a hypothetical client  
12 similar to but not the same as the estate of Aretha  
13 Franklin and if there was a suspicion that persons were  
14 performing the works without submitting cue sheets, what  
15 would you do to assure that that hypothetical client  
16 would receive its due share from ASCAP?

17 MR. ANDERSON: Objection, argumentative.

18 A. In the course of a royalty audit, we look for  
19 unreported usages that may occur, and we take it up with  
20 either the record company or the music publisher that  
21 we're auditing.

22 Q. How do you detect those sorts of events?

23 A. Various Internet research, knowledge of the  
24 client.

25 Q. Has it been the case that ASCAP has come to you

Page 46

1 with funds that were owed that were distinct from those  
2 generated from cue sheets?

3 MR. ANDERSON: Objection, vague and  
4 ambiguous.

5 A. Would you be able to clarify?

6 Q. Are you aware as to whether ASCAP has its own  
7 enforcement arm?

8 MR. ANDERSON: Objection, vague and  
9 ambiguous.

10 A. I believe, yes, I think they do.

11 Q. Do they monitor performances by artists where  
12 cue sheets were not submitted?

13 MR. ANDERSON: Objection, vague and  
14 ambiguous. I think you misspoke. But unless you want  
15 me to identify it, I'll just state the objection.

16 A. Would you be able to clarify? I'm sorry.

17 Q. Let's leave it alone.

18 MR. ANDERSON: I'm not sure what that  
19 means.

20 MR. LORBIECKI: I'm not going to reask  
21 the question.

22 MR. ANDERSON: So is the question  
23 pending or withdrawn?

24 MR. LORBIECKI: It's withdrawn.

25 MR. ANDERSON: Okay. Thank you. I was

Page 47

1 unclear. Thank you.

2 Q. (BY MR. LORBIECKI) Do you see at the top of  
3 page 9 in the paragraph enumerated 2, parenthesis, where  
4 you've made a statement in that paragraph? Do you see  
5 the paragraph is what I guess I should ask.

6 A. Yes.

7 Q. I honestly simply do not understand what that  
8 paragraph means. Could you explain it to me in greater  
9 depth?

10 A. "Underpayment or nonpayment of soundtrack  
11 royalties," I think this is referring to Boschan  
12 Schedule 3.

13 Q. Is the point that you're making in paragraph 2  
14 that it is ASCAP who was supposed to be paying for  
15 soundtrack royalties and not Microsoft?

16 A. These are -- this is Schedule 3 of the Boschan  
17 royalty report in which she says that a percentage of  
18 Microsoft's net receipts are payable to ODS, and she's  
19 talking -- it's her Schedule 3.

20 Q. Okay. I just wanted to know what the paragraph  
21 meant.

22 A. This is -- we're starting off, "The Boschan  
23 report claims underpayments or nonpayments of the  
24 following to ODS." And number one is ASCAP,  
25 SoundExchange, and AARC, and then we get onto No. 2

Page 48

1 talking about the soundtrack royalties, the distribution  
2 of the recordings.

3 Q. Okay.

4 A. That's Boschan's Schedule 3.

5 Q. Yes. Okay. I get it now. I just did not  
6 understand the paragraph.

7 A. Okay.

8 Q. So I thought I would ask. You are the author.  
9 You seem the reasonable person to ask.

10 A. Very good.

11 Q. Looking now at page 10, and specifically I'm  
12 looking at D, period, parens, 1, entitled "ASCAP," in  
13 that paragraph, the first paragraph, referring to your  
14 description of Schedule 2 of the Boschan report, you  
15 disagree with the report's estimate of 124,209 as  
16 underpaid in the writer's share of the ASCAP performance  
17 royalties. Could you explain how you disagree?

18 A. Yes. In the first instance, as previously  
19 discussed, ASCAP royalties, performance royalties, are  
20 paid to the publisher and the songwriter in equal  
21 50 percent shares. ODS itself is not a songwriter, and  
22 so they wouldn't have standing to make collection of the  
23 writer's share of royalties.

24 Q. When you say ODS is not a songwriter, is it the  
25 case that ODS sold its rights to Microsoft in Exhibit 2,

O'Donnell/Salvatory, Inc. v. Microsoft Corporation

Christopher Hull

Page 49

1 the ICA?

2 MR. ANDERSON: Objection, vague and  
3 ambiguous, argumentative.

4 Q. (BY MR. LORBIECKI) Let's do it this way: What  
5 was sold in Exhibit 2?

6 MR. ANDERSON: Object to the extent it  
7 calls for a legal conclusion, and the question is vague  
8 and ambiguous.

9 Q. (BY MR. LORBIECKI) You may answer, Mr. Hull.

10 A. I'm looking at Exhibit 2 right now. Ownership  
11 of the work was assigned to Microsoft.

12 Q. Okay. If your statement in Exhibit 1 that ODS  
13 would not be entitled to royalties, how is it that ODS  
14 could sell any rights?

15 MR. ANDERSON: Objection, argumentative.

16 A. The writer's shares of royalties would be  
17 payable to the songwriters. ODS is a corporate entity,  
18 and it's not the songwriters.

19 Q. If the work was composed by songwriters employed  
20 by ODS in a work-for-hire situation, would it not in  
21 fact be ODS who was the author of the song?

22 MR. ANDERSON: Objection, an incomplete  
23 hypothetical, calls for a legal conclusion, and is vague  
24 and ambiguous because now you're referring to authors,  
25 not writers.

Page 50

1       A. The writer's royalty would always be payable to  
2 the writers, those employed by ODS, but not to ODS.  
3 That's always how a work-for-hire works. The songwriter  
4 always gets their ASCAP royalties directly.

5       Q. So in your statement that -- in your prior  
6 testimony, I have at least understood it to be the case  
7 that ASCAP would pay upon registration of the work; is  
8 that correct?

9                    MR. ANDERSON: Objection,  
10                   mischaracterizes the testimony and vague and ambiguous.

11       A. ASCAP would pay 50 percent of the royalty to the  
12 music publisher, and they would pay 50 percent to the  
13 songwriter.

14       Q. What would happen if the publisher doesn't  
15 register the work?

16       A. Probably no royalties would be generated.

17       Q. In your calculations in the rebuttal to  
18 Ms. Boschan's own calculations of what is owed, haven't  
19 you presumed that each of the works was properly  
20 registered when you relied on the ASCAP royalty  
21 statements?

22       A. What I did was I took the ASCAP royalty  
23 statements that Microsoft received for the publisher's  
24 share and I identified what they had received for their  
25 interest, their 50 percent of the pot, and whatever they

Page 51

1 received is what -- is the royalty. And because there's  
2 a 50 percent/50 percent allocation, that has to be  
3 basically equal to what the writers get. And I think  
4 that that takes case -- correctly addresses any  
5 misregistration.

6 Q. What about nonregistration?

7 MR. ANDERSON: Objection, that's vague  
8 and ambiguous. It's not even a complete question.

9 Q. (BY MR. LORBIECKI) What liability arises when a  
10 work is not registered?

11 MR. ANDERSON: Objection, calls for a  
12 legal conclusion.

13 A. My understanding of your question, sir, is that  
14 what percentage would be payable on that, and I think  
15 because nothing was received, nothing's payable.

16 MR. LORBIECKI: I'm going to show you  
17 now what's been marked Exhibit 10. Placing that now  
18 into the chat room.

19 (Exhibit No. 10 marked for identification.)

20 COURT REPORTER: I might be missing it,  
21 but I don't think I have a 9.

22 MR. LORBIECKI: Let me check. You don't  
23 yet have a 9. There will be a 9. It's coming. I'm  
24 sorry I took them out of order, but the way this went,  
25 it just seems like now is a good time to dive into 10.

Page 53

1 Q. So if Microsoft elected not to file, then the  
2 amount that would come to either of Marty O'Donnell,  
3 Michael Salvatori, or ODS, one of those or several of  
4 those entities, would be diminished by the failure to  
5 file; is that correct?

6 MR. ANDERSON: Again, mischaracterizes  
7 the testimony.

8 Q. (BY MR. LORBIECKI) Mr. Hull?

9 A. I believe no royalties would be generated.

10 Q. So doesn't your assumption that the publisher's  
11 share of the royalties mirrors the writer's share of the  
12 royalties presume that every filing was appropriately  
13 made?

14 MR. ANDERSON: Objection, it's  
15 argumentative. There would be no publisher share if  
16 there wasn't a registration, and your client admits that  
17 all the registrations on all the music, including  
18 Halo Legends, was registered. So this line of  
19 questioning is irrelevant, and I think you're missing a  
20 fundamental point that there would be no publisher's  
21 royalties if there was no registration.

22 A. I'm sorry, should I be answering your question  
23 right now?

24 Q. No, I am looking at something. I'll be a  
25 moment. I'm sorry. I did not mean to suggest that you

Page 54

1 owed me an answer at this point.

2 In turning again to page 9, under Roman  
3 numeral IV, "Rebuttal of Analysis of Findings," you made  
4 the statement that, in the paragraph beginning, "In my  
5 consideration for alternate calculations, I recognize  
6 that ODS brought its action against Microsoft on  
7 March 10, 2020." And then you set out to apply two  
8 distinct statute of limitations calculations to  
9 Ms. Boschan's calculations in order to diminish the  
10 amount due; is that correct?

11 MR. ANDERSON: Objection, argumentative  
12 as to the last point.

13 A. No, that wasn't my intent. I prepared four  
14 calculations in my report. The first is what I believe  
15 to be the liability. The first alternate calculation  
16 was what would the liability be if ODS was correct in  
17 their position. And then the second alternative  
18 calculation was to determine what would the impact of  
19 the six-year statute of limitations have on the amount  
20 of the liability. And the third alternative calculation  
21 was what would be the effect of the liability if there  
22 was a three-year statute of limitations. That's what I  
23 was trying to set forth.

24 Q. What is the basis for asserting that a six-year  
25 statute of limitations would apply to this case?

## O'Donnell/Salvatory, Inc. v. Microsoft Corporation

Christopher Hull

Page 55

1 MR. ANDERSON: Objection, calls for a  
2 legal conclusion, and it's argumentative.

3 Q. (BY MR. LORBIECKI) Mr. Hull, what was your  
4 basis for applying the six-year statute of limitations?

5 A. A written contract dispute in the state of  
6 Washington.

7 Q. And where did you get that statute of  
8 limitations?

9 A. In discussing with my client's counsel.

Q. On what basis did you apply a three-year statute of limitations?

2 A. On a similar basis, on the breach of applied  
3 duty of good faith and fair dealing for this state of  
4 Washington law.

Q. Which would be the appropriate one to apply in this case?

7 MR. ANDERSON: Objection, calls for a  
8 legal conclusion.

9 A. I'm just -- I'm doing calculations, you know, to  
20 give alternate views of the facts.

21 MR. LORBIECKI: I'm going to place  
22 Exhibit 9 in the chat room

(Exhibit No. 9 marked for identification.)

24 Q. (BY MR. LORBIECKI) I'm going to ask you  
25 specifically to go to pages 14 through 16 of Exhibit 9.

Page 64

1 and the email in Exhibit 14 shows \$2,019,000 in  
2 royalties revenue for the period through 2013.

3 Q. And so it's your testimony that these numbers do  
4 align?

5 A. These numbers -- they do because the 1,757,076  
6 that I show is directly out of the Boschan report.

7 Q. Now, in the course of performing your analysis,  
8 did you observe any proofs of payment from Microsoft to  
9 ODS? And when I'm talking about proofs of payment, I'm  
10 talking about sent check copies, bank wire transfer  
11 documents, or other things that showed the actual  
12 transference of money.

13 A. I did not see those. I saw other documents.

14 Q. What other documents would show the actual  
15 transference of the money?

16 A. First off, the amounts confirmed by ODS is set  
17 forth in the email that you had sent Cedar Boschan, so  
18 that, I believe -- which reconciles very closely to the  
19 royalty statements that accompanied those payments that  
20 I referenced as well as the summary of Microsoft  
21 payments to ODS. Now, on top of that, I also referenced  
22 advances in royalties paid in the agreements.

23 Q. But if you take and add up the royalties in the  
24 email, it doesn't amount to the same number as your  
25 calculations reflect. Aren't there missing payments?

Page 65

1 A. I didn't pick up every payment in the -- that  
2 Excel file that you brought up before.

3 Q. So there were missing payments in the Excel file  
4 that you reviewed in that email; is that correct?

5 MR. ANDERSON: Objection, vague and  
6 ambiguous.

7 A. Could you repeat that? Because there are  
8 payments shown in the Excel file that I didn't pick up.

9 Q. I'm not sure I understand what you mean by you  
10 didn't pick them up.

11 A. I didn't reflect them in my -- I didn't give  
12 Microsoft credit for having made those payments, and the  
13 reason I didn't is because some of the payments in that  
14 file relate to fees rather than royalties. In those  
15 instances I didn't pick up the fees.

16 Q. What are NMPA earnings?

17 A. Where do you see that, sir?

18 Q. What I'm asking is what are they or are you  
19 familiar with them? N, as in Nancy, M, as in Mary, P,  
20 as in papa, A, as in alpha.

21 A. I'm familiar with an organization called the  
22 NMPA, which stands for the National Music Publishers'  
23 Association, and what NMPA payments are could be  
24 anything.

25 Q. Were there any NMPA payments reflected in your

Page 66

1 analysis of the Boschan report?

2 MR. ANDERSON: Objection, vague and  
3 ambiguous.

4 A. I don't know if I understand the question.

5 Q. Did you see any payments paid to ODS -- did you  
6 see any payments reflected from -- or NMPA performance  
7 earnings reflected in the documents that you reviewed to  
8 prepare your rebuttal?

9 A. I don't understand what you're asking. I did  
10 not see any NMPA payments. I don't know why I would,  
11 and I don't know specifically what you're referring to.

12 Q. I'm just asking if you saw any. I think you  
13 just testified that you did not; is that correct?

14 A. I believe not. I don't know what you're talking  
15 about, to be honest. I'd like to say that. But I'm not  
16 aware of anything marked "NMPA payment."

17 Q. Under what circumstances would one receive a  
18 payment, an NMPA payment?

19 MR. ANDERSON: And just to be clear,  
20 you're talking about from the association, from the NMPA  
21 to someone?

22 MR. LORBIECKI: That's correct.

23 MR. ANDERSON: Okay.

24 A. I'm aware -- one thing that comes to mind right  
25 now is a settlement between the National Music

Page 67

1 Publishers' Association and the Record Industry  
2 Association of America in respect to pending and  
3 unmatched songs, usages of compositions, that the record  
4 companies would pay to the NMPA and then the NMPA would  
5 then pay them on to the publishers. But that is limited  
6 to the major record labels. Sony Music Entertainment,  
7 Universal Music Group, and Warner Chapell -- Warner  
8 Music Group, those are the entities that pay the NMPA  
9 settlement.

10 Q. Warner Chapell did in fact represent Microsoft  
11 for the Halo properties during some of the time in  
12 question, did they not?

13 A. I misspoke when I said the word "Warner  
14 Chapell." The payments -- the NMPA payments would be  
15 made by a separate and unrelated company, which I  
16 believe is a separate legal entity, the record company  
17 called Warner Music Group, right? But Warner Chapell,  
18 that's a separate question. That would be -- we should  
19 discuss that.

20 Q. If there were NMPA payments, would they come  
21 through the distributor?

22 A. No.

23 Q. I'm sorry, what?

24 A. No.

25 Q. No? How would they come to Microsoft?

Page 78

1 cassette, and it'd probably be gratis usage if it was in  
2 a movie theater.

3 Q. When you say gratis usage, what do you mean?

4 A. There is no theatrical royalty in the  
5 United States.

6 Q. What if it's used --

7 A. Music displayed in a movie house does not  
8 attract a royalty.

9 Q. What if music is played to promote the game?

10 A. Like an advertisement?

11 MR. ANDERSON: Objection -- okay. Just  
12 bear with me a second -- incomplete hypothetical, vague  
13 and ambiguous. I don't know what "how about" means.

14 Q. (BY MR. LORBIECKI) If music is used to promote  
15 the game, is that one of the publishing revenue by  
16 source that is listed under your 2019 U.S. publishing  
17 revenue by source? Does it fall within one of the  
18 categories?

19 A. If there's a fee that is attracted for an  
20 advertisement that uses music, that would be a  
21 synchronization usage.

22 Q. If the music is used for the background of an  
23 audiobook, where does it fall in here? Which of these  
24 categories?

25 A. Probably other.

Page 79

1 Q. Could you explain that?

2 A. To be honest, I've not come across that before.

3 I'm kind of taking a guess. You're saying in an  
4 audiobook where there is music playing in the  
5 background. That would be, I think, probably a specific  
6 license. I think that would be an "Other" usage.

7 Q. Okay. One second, please. Did you do anything  
8 to -- I'm going to skip Exhibit 16 for now so our court  
9 reporter doesn't worry that we've missed something  
10 inadvertently.

11 Did you do anything to truth-check the  
12 royalty sheets from Sumthing Else for the period wherein  
13 Sumthing Else was the distributor for the Halo games?

14 A. I relied on Boschan's work.

15 Q. Were you aware that there was -- that Sumthing  
16 Else went into receivership?

17 A. No.

18 Q. And were you aware that the reason for going  
19 into receivership included the misreporting of revenue?

20 MR. ANDERSON: Objection, lacks  
21 foundation and argumentative.

22 MR. LORBIECKI: I'm going to ask you to  
23 review Exhibits 17, 18, and 19, which I'm going to put  
24 up in the chat. And I'm going to point out to you that  
25 large parts of each of the exhibits are, in fact,

Page 80

1 redacted. I'm aware that they're redacted. I'm not  
2 asking you in any way to comment on the redactions.  
3 They are redacted -- I said 17 and 18? I guess only 17  
4 and 18. I'd like you to review them, please.

5 (Exhibit Nos. 17 and 18 marked for identification.)

6 Q. (BY MR. LORBIECKI) Mr. Hull, did you do  
7 anything to check to see that the reporting submitted by  
8 Sumthing Else was accurate?

9 MR. ANDERSON: Objection, irrelevant.

10 A. No.

11 Q. Any calculations you made remain based on  
12 Sumthing Else's reports of the revenue that they  
13 distributed to Microsoft; is that correct?

14 MR. ANDERSON: Objection,  
15 mischaracterizes the testimony. He's identified  
16 multiple sources of information.

17 A. I'm sorry, could you repeat the question?

18 Q. When you calculated how much money Microsoft  
19 received from Sumthing Else, did you rely on  
20 Sumthing Else's reports of revenue?

21 A. Yes, I suppose indirectly I did because I relied  
22 on Ms. Boschan's report.

23 Q. Let's go into page 20, wherein you assert that  
24 Microsoft overpaid ODS by \$135,586. How do you arrive  
25 at that number?

Page 81

1 A. Let's go to Schedule 3.

2 Q. Okay.

3 A. And I'll walk you through it. There is two  
4 schedules, 3A(i) and 3A(ii). 3A(i) is a calculation of  
5 the royalties payable reduced by royalties paid  
6 conforming to the period for which the Microsoft revenue  
7 report was available. So let's turn to 3A(i).

8 Q. Okay.

9 A. And here we have a summary of the revenue as  
10 categorized in the Microsoft revenue report for the  
11 period from June 2010, quarter ended, flip a few pages,  
12 to PDF page 41. And you'll see that the total revenue  
13 generated by the various projects adds up to 1,944,000.  
14 That's in the total column, the second column, and  
15 numbers on page 41 of the PDF.

16 Q. Okay.

17 A. I then applied the ODS percentages as determined  
18 by Boschan to come up with the prorated revenue for the  
19 ODS tracks. I then applied the 20 percent ODS royalty  
20 percentage, the same percentage that Boschan used, to  
21 come up with the amount payable of \$279,000. I then  
22 credited Microsoft with \$245,941 in payments as detailed  
23 in Schedule 3A(i). And we should probably switch to  
24 schedule 3A(i) for a moment, which commences on PDF  
25 page 43. And if you go to PDF page 45, which is page 3

Page 82

1 of 3 of this schedule, you'll see in the second column  
2 of numbers \$245,941. That's how I came up with the  
3 royalties paid for that period of time.

4 Q. Now, ODS did not determine how much they were to  
5 be paid. That information was uniquely in the hands of  
6 Microsoft. In reviewing these documents, do you have a  
7 reason why overpayment occurred?

8 MR. ANDERSON: Objection -- the preface  
9 is not a question, and it is actually false, but -- so  
10 I'd object to that.

11 Q. (BY MR. LORBIECKI) Have you formed an  
12 impression on how overpayment occurred?

13 A. I think -- we only got halfway through the  
14 schedule. Do you want to go through the rest of the  
15 schedule?

16 Q. Sure.

17 A. Okay. 3A(ii), which commences on PDF page 42 of  
18 the file. In that schedule you'll see total receipts  
19 for the period from 2002 to the first quarter of 2010,  
20 which is exactly the period for which Boschan picked up  
21 revenue but didn't offset any payments. So I don't have  
22 revenue figures for that period of time other than the  
23 Sumthing Else revenue figures which Boschan herself  
24 summarized and prepared the schedule. So I'm taking her  
25 numbers.

Page 85

1           A. No. No. And just for clarity sake, the  
2           royalties -- the revenue on which my royalty  
3           calculations are based is basically the same -- it's the  
4           same number -- within \$8,000 of what Boschan did.  
5           That's the difference, \$8,000. We're talking about the  
6           same revenue. The difference here is the payments. And  
7           you see the payments that I've given credit for. I  
8           don't know if those payments include the composition  
9           "Reverie."

10          Q. In every instance where you gave -- no, strike  
11           that.

12           In looking at Rebuttal Schedule 3A(ii) --  
13           strike that as well. I apologize.

14           MR. ANDERSON: No worries.

15           MR. LORBIECKI: I'll tell you what.

16           It's early for a lunch break, yet I'd like a little bit  
17           of time -- if you can eat early, that would be great,  
18           but --

19           MR. ANDERSON: I can eat early, but it's  
20           been an hour anyway, so if you want to take a break and  
21           then resume.

22           MR. LORBIECKI: I figured there was a  
23           break. I wanted to take just a little bit more than ten  
24           minutes. So what I was going to suggest is if it's okay  
25           with the court reporter, could we all take our lunch

Page 93

1 Catherine Brumbaugh, is trying to reach Erika in order  
2 to download that.

3 Q. (BY MR. LORBIECKI) I would certainly appreciate  
4 any help in our getting it because if I'm understanding  
5 you, everything -- that spreadsheet did not change the  
6 Microsoft overpayment from the years from 2010 to  
7 current; is that correct, Mr. Hull?

8 A. I think basically for the period from -- and  
9 it's best to look at Schedule 3A at this point on  
10 page 36 of the PDF. For the period from April 1st,  
11 2010, to June 30th, 2021, I do believe that there's an  
12 underpayment of \$33,077, but it's more than consumed by  
13 the overpayment that existed as of March 31st, 2010.  
14 And so it ends up to be a net overpayment of 135,000.

15 Q. And your schedule 3A(i) is based on that one  
16 spreadsheet, correct?

17 A. Yes. And, you know, for what it's worth, it's  
18 within \$8,000 of Cedar Boschan's calculations.

19 Q. So I guess what you're saying -- and I'm not  
20 trying to put words in your mouth, so if I'm wrong just  
21 tell me I'm wrong. But I guess what you're saying is  
22 for the period for which we are missing the spreadsheet,  
23 her prediction of what occurred is within 80,000 of your  
24 prediction; is that correct?

25 A. 8,000.